

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRYANT WHITNEY,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
COMMONWEALTH OF PA, et al.,	:	
Respondents.	:	No. 12-6241

AMENDED ORDER¹

AND NOW, this 18th day of March, 2014, having considered the Petition for Writ of *Habeas Corpus* filed by Petitioner Bryant Whitney (Docket No. 1), the Response thereto (Docket No. 10), Petitioner's Reply (Docket No. 11), U.S. Magistrate Judge Linda K. Caracappa's Report & Recommendations (Docket No. 12), and Petitioner's objections thereto (Docket No. 13),² it is hereby **ORDERED** that:

1. The Report & Recommendations are **APPROVED** and **ADOPTED**.³
2. The Petition for Writ of Habeas Corpus is **DISMISSED** without an evidentiary hearing. Mr. Whitney's double jeopardy claim is dismissed with prejudice, and his remaining claims are dismissed without prejudice for failure to exhaust.
3. There is no probable cause to issue a certificate of appealability.⁴

¹ The Court's March 18, 2014 Order (Docket No. 14) is hereby **VACATED**.

² The document at Docket Number 13 is entitled "Appeal [of] Report & Recommendation," which the Court will construe as objections to the Report and Recommendation.

³ In his objections, Mr. Whitney essentially reiterates arguments from his Petition and his Reply. As U.S. Magistrate Judge Caracappa concluded, Mr. Whitney failed to properly exhaust three of his four claims in state court. As to his double jeopardy claim, Mr. Whitney has not shown that the state court's factual findings with respect to the issue of alleged prosecutorial misconduct were erroneous. Therefore, Mr. Whitney is not entitled to *habeas* relief on that claim either.

⁴ A certificate of appealability may issue only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner must "demonstrate that reasonable jurists

4. The Clerk of Court shall mark this case **CLOSED** for all purposes, including statistics.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). The Court agrees with U.S. Magistrate Judge Caracappa that there is no probable cause to issue such a certificate in this action.